

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE) C-11-02509 LHK
ANTITRUST LITIGATION,)
) SAN JOSE, CALIFORNIA
)
) APRIL 8, 2013
)
) PAGES 1-31
)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: JOSEPH SAVERI LAW FIRM
BY: JOSEPH SAVERI
LISA J. LEEBOVE
JAMES G. DALLAL
255 CALIFORNIA STREET, SUITE 450
SAN FRANCISCO, CALIFORNIA 94111

LIEFF, CABRASER,
HEIMANN & BERNSTEIN
BY: KELLY M. DERMODY
DEAN M. HARVEY
ANNE B. SHAVER
275 BATTERY STREET, 30TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

UNITED STATES COURT REPORTERS

1 SAN JOSE, CALIFORNIA APRIL 8, 2013

2 P R O C E E D I N G S

10:08AM 3 (COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)
10:08AM 4 THE CLERK: CALLING CASE NUMBER C-11-02509 LHK, IN
10:08AM 5 RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION.
10:08AM 6 MR. SAVERI: GOOD MORNING, YOUR HONOR.
10:08AM 7 JOSEPH SAVERI, JOSEPH SAVERI LAW FIRM ON BEHALF OF THE
10:08AM 8 PLAINTIFFS.
10:08AM 9 THE COURT: OKAY. GOOD MORNING.
10:08AM 10 MS. DERMODY: GOOD MORNING, YOUR HONOR.
10:08AM 11 KELLY DERMODY FROM LEIF CABRASER. WITH ME FROM MY FIRM ARE
10:08AM 12 DEAN HARVEY AND ANNE SHAVER.
10:08AM 13 THE COURT: WHO'S WITH YOU, MR. SAVERI?
10:08AM 14 MR. MITTELSTAEDT: WHO'S WITH YOU, JOE?
10:08AM 15 MR. SAVERI: OH, LISA LEEBOVE WITH MY OFFICE, AND
10:08AM 16 JAMES DALLAL.
10:08AM 17 THE COURT: OKAY. THANK YOU.
10:08AM 18 MR. MITTELSTAEDT: GOOD MORNING, YOUR HONOR.
10:08AM 19 BOB MITTELSTAEDT AND KATE ZENG FOR ADOBE AND INTUIT.
10:08AM 20 THE COURT: AND THAT'S Z-H-A-N-G?
10:09AM 21 MR. MITTELSTAEDT: Z-E-N-G.
10:09AM 22 THE COURT: Z-E-N-G. OKAY, THANK YOU.
10:09AM 23 MR. RILEY: GOOD MORNING, YOUR HONOR. GEORGE RILEY
10:09AM 24 OF O'MELVENY & MYERS, AND I'M JOINED BY CHRISTINA BROWN. WE
10:09AM 25 REPRESENT APPLE.

UNITED STATES COURT REPORTERS

1

2 APPEARANCES (CONTINUED)

3

4 FOR DEFENDANT O'MELVENY & MYERS
APPLE: BY: GEORGE A. RILEY
CHRISTINA J. BROWN
TWO EMBARCADERO CENTER
28TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

7 FOR DEFENDANT KEKER & VAN NEST
LUCASFILM: BY: DANIEL E. PURCELL
EUGENE M. PAIGE
633 BATTERY STREET
SAN FRANCISCO, CALIFORNIA 94111

11 FOR DEFENDANT MAYER BROWN
GOOGLE: BY: LEE H. RUBIN
TWO PALO ALTO SQUARE, SUITE 300
PALO ALTO, CALIFORNIA 94306

14 FOR DEFENDANTS JONES DAY
ADOBE AND INTUIT: BY: ROBERT A. MITTELSTAEDT
CATHERINE ZENG
555 CALIFORNIA STREET
26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104

18 FOR DEFENDANT BINGHAM MCCUTCHEN
INTEL: BY: KRYSTAL DENLEY BOWEN
1117 S. CALIFORNIA AVENUE
PALO ALTO, CALIFORNIA 94304

20 FOR DEFENDANT COVINGTON & BURLING
PIXAR: BY: EMILY J. HENN
JOHN NIELDS
333 TWIN DOLPHIN DRIVE, SUITE 700
REDWOOD SHORES, CALIFORNIA 94065

UNITED STATES COURT REPORTERS

10:09AM 1 THE COURT: OKAY. GOOD MORNING.
10:09AM 2 MS. BOWEN: GOOD MORNING. KRYSTAL DENLEY BOWEN FROM
10:09AM 3 BINGHAM MCCUTCHEN REPRESENTING INTEL.
10:09AM 4 THE COURT: OKAY. GOOD MORNING.
10:09AM 5 MR. RUBIN: GOOD MORNING. LEE RUBIN FROM MAYER BROWN
10:09AM 6 REPRESENTING GOOGLE.
10:09AM 7 THE COURT: OKAY, GOOD MORNING.
10:09AM 8 MR. PURCELL: DAN PURCELL FROM KEKER & VAN NEST
10:09AM 9 REPRESENTING LUCASFILM, AND I'M HERE WITH MY PARTNER,
10:09AM 10 EUGENE PAIGE.
10:09AM 11 THE COURT: GOOD MORNING.
10:09AM 12 MR. NIELDS: GOOD MORNING, YOUR HONOR. JOHN NIELDS
10:09AM 13 AND EMILY HENN FROM COVINGTON REPRESENTING PIXAR.
10:09AM 14 THE COURT: AND THE LAST NAME, N-E-I-L --
10:09AM 15 MR. NIELDS: N-I-E-L-D-S.
10:09AM 16 THE COURT: OKAY, THANK YOU. GOOD MORNING.
10:10AM 17 OKAY. PLEASE TAKE A SEAT.
10:10AM 18 I WOULD LIKE TO TALK ABOUT A FEW ISSUES AND THE AMENDED
10:10AM 19 SCHEDULE, AND THEN I'D LIKE TO GIVE YOU AN OPPORTUNITY TO MEET
10:10AM 20 AND CONFER ABOUT YOUR DISCOVERY DISPUTES AND THEN I'LL COME
10:10AM 21 BACK OUT AND SEE IF YOU CAN AT LEAST NARROW OR RESOLVE SOME.
10:10AM 22 IS THAT AN ACCEPTABLE PLAN?
10:10AM 23 MR. MITTELSTAEDT: YES.
10:10AM 24 MR. SAVERI: YES.
10:10AM 25 MS. DERMODY: YES, YOUR HONOR.

UNITED STATES COURT REPORTERS

10:16AM **1** AND THEN IF YOU WOULD, PLEASE, CAN YOU FILE A SETTLEMENT
 10:16AM **2** STATUS REPORT? WHAT DATE MAKES SENSE IF THE 19TH IS YOUR
 10:16AM **3** DEADLINE?
 10:16AM **4** MR. MITTELSTAEDT: THE 19TH?
 10:16AM **5** THE COURT: OKAY, THAT WOULD BE GREAT.
 10:16AM **6** OKAY. THEN OPENING EXPERT REPORTS, I WANTED TO SEE IF I
 10:16AM **7** COULD SLIGHTLY ADJUST YOUR SCHEDULE. I'M TRYING TO STAY WITHIN
 10:16AM **8** WHAT YOU'VE PROPOSED, BUT UNFORTUNATELY, I HAVE THE SECOND
 10:16AM **9** CASE, THE SECOND APPLE V. SAMSUNG CASE GOING TO TRIAL
 10:16AM **10** MARCH 31ST OF 2014, AND IT IS SET TO GO TO TRIAL THROUGH
 10:16AM **11** APRIL 25TH.
 10:16AM **12** SO TO THEN TURN AROUND IN FOUR DAYS AND DO YOUR TRIAL, I
 10:17AM **13** THINK WE'LL BE DEAD. I JUST DON'T THINK WE CAN PROBABLY HANDLE
 10:17AM **14** THAT.
 10:17AM **15** SO I WANTED TO ASK IF WE COULD MOVE YOUR TRIAL DATE TO
 10:17AM **16** MAY 27TH?
 10:17AM **17** MS. DERMODY: YES, YOUR HONOR.
 10:17AM **18** THE COURT: OKAY. DOES THAT --
 10:17AM **19** MR. MITTELSTAEDT: YES, YOUR HONOR.
 10:17AM **20** THE COURT: OKAY. I APPRECIATE THAT.
 10:17AM **21** SO THEN LET ME WORK BACKWARDS BECAUSE I'M TRYING TO FIT IN
 10:17AM **22** HEARING DATES IN YOUR CASE, WHICH WILL REQUIRE A CONSIDERABLE
 10:17AM **23** AMOUNT OF WORK, SO THAT IT DOESN'T OVERLAP WITH APPLE II, WHICH
 10:17AM **24** IS ALSO AT THE SAME TIME GOING TO BE GOING THROUGH DAUBERTS,
 10:17AM **25** MOTIONS IN LIMINE, SUMMARY JUDGMENT. IT'S JUST TO -- YOU KNOW,
 UNITED STATES COURT REPORTERS

10:17AM **1** SO I CAN TRY TO MORE TIMELY GIVE YOU AN ORDER.
 10:17AM **2** SO IF WE WORK BACKWARDS AND WE HAVE THE TRIAL STARTING ON
 10:17AM **3** MAY -- NOW, IS THERE A REASON -- OH, I KNOW WHY WE'RE DOING IT
 10:17AM **4** ON TUESDAY, BECAUSE THAT MUST BE MEMORIAL DAY.
 10:17AM **5** MR. SAVERI: RIGHT.
 10:17AM **6** THE CLERK: YES.
 10:17AM **7** THE COURT: SO THEN THE 26TH IS MEMORIAL DAY. YOUR
 10:17AM **8** MEMORIAL WEEKEND WILL NOT BE FUN. WE'LL START TUESDAY AT 9:00.
 10:17AM **9** WHAT DO YOU THINK THE LENGTH OF THE TRIAL IS? OBVIOUSLY
 10:18AM **10** IT'S GOING TO DEPEND ON WHETHER IT'S A CLASS OR INDIVIDUAL
 10:18AM **11** CLAIMS, BUT WHAT'S YOUR BEST GUESS?
 10:18AM **12** MR. SAVERI: I THINK WE WERE TALKING ABOUT THREE TO
 10:18AM **13** FOUR WEEKS, BUT 15 COURT DAYS.
 10:18AM **14** MS. DERMODY: YES, 15 COURT DAYS.
 10:18AM **15** THE COURT: IS THAT -- DO YOU AGREE WITH THAT?
 10:18AM **16** MR. MITTELSTAEDT: I THINK THAT'S IN THE RANGE.
 10:18AM **17** THE COURT: OKAY. WOULD YOU GO UP OR DOWN?
 10:18AM **18** MR. MITTELSTAEDT: I WOULD GO -- I WOULD GO UP, IN
 10:18AM **19** PART BECAUSE THERE'S SEVEN DEFENDANTS.
 10:18AM **20** THE COURT: RIGHT. OKAY. HOW MUCH UP WOULD YOU GO?
 10:18AM **21** MR. MITTELSTAEDT: I WOULD GO UP TWO WEEKS.
 10:18AM **22** THE COURT: SO YOU'D GO UP ANOTHER 10 DAYS TO 25
 10:18AM **23** DAYS?
 10:18AM **24** MR. MITTELSTAEDT: YES.
 10:18AM **25** THE COURT: WOW. I, UNFORTUNATELY, DON'T THINK THAT
 UNITED STATES COURT REPORTERS

10:18AM **1** THAT IS --
 10:18AM **2** MR. MITTELSTAEDT: HOW ABOUT 20?
 10:18AM **3** THE COURT: TO MAKE IT A TOTAL OF 20 DAYS?
 10:18AM **4** MR. MITTELSTAEDT: YES.
 10:18AM **5** THE COURT: ALL RIGHT. WE CAN ALWAYS FINE TUNE THIS
 10:18AM **6** LATER, BUT FOR NOW -- WHAT I WILL DO IS IMPOSE TIME LIMITS AND
 10:19AM **7** IT'LL PROBABLY SHRINK THIS NUMBER DOWN. OKAY?
 10:19AM **8** MR. MITTELSTAEDT: AND, YOUR HONOR, I'D LIKE --
 10:19AM **9** THE COURT: FOR NOW I'M GOING TO PUT -- I'LL PUT --
 10:19AM **10** I'M GOING TO PUT 17 DAYS FOR NOW AND THEN WE CAN FINE TUNE IT
 10:19AM **11** LATER. BUT I'M GOING TO IMPOSE TIGHT TIME LIMITS AND TIGHT
 10:19AM **12** LIMITS ON EVERYTHING, SO WE'LL SQUEEZE IT IN. OKAY. SO 17
 10:19AM **13** DAYS STARTING MAY 27.
 10:19AM **14** I WOULD LIKE TO -- BECAUSE THE DAUBERT MOTIONS, THE MOTIONS
 10:19AM **15** IN LIMINE AND THE SUMMARY JUDGMENT TAKE QUITE A BIT OF
 10:19AM **16** RESOURCES, I WOULD LIKE TO CONSIDER MAYBE SPLITTING THAT UP
 10:19AM **17** INTO THREE DIFFERENT HEARINGS.
 10:19AM **18** BUT -- PARDON ME -- LET ME KNOW IF THE DISPOSITIVE MOTIONS
 10:19AM **19** WILL BE CONTINGENT UPON A DAUBERT RULING, BECAUSE THEN I THINK
 10:19AM **20** THOSE WILL NEED TO BE DONE TOGETHER.
 10:19AM **21** BUT IF THERE'S A WAY TO SPLIT IT UP SO THAT WE HAVE A
 10:19AM **22** LITTLE MORE TIME TO GIVE YOU ORDERS AND EVERYTHING --
 10:19AM **23** MR. SAVERI: I THINK THE LAST TIME WE WERE OUT HERE,
 10:19AM **24** WE TALKED ABOUT THERE BEING SOME DAUBERT MOTIONS THAT RELATE TO
 10:20AM **25** SUMMARY JUDGMENT AND SOME THAT MAY JUST -- MAY BE MORE GENERAL
 UNITED STATES COURT REPORTERS

10:20AM **1** 702 MOTIONS THAT RELATE TO TRIAL. SO IT MAY MAKE SENSE TO
 10:20AM **2** DIVIDE THOSE IN SOME FASHION.
 10:20AM **3** THE COURT: OKAY. BUT I NEED LIMITS JUST BECAUSE
 10:20AM **4** IT --
 10:20AM **5** MR. SAVERI: OKAY.
 10:20AM **6** THE COURT: -- YOU KNOW --
 10:20AM **7** MR. SAVERI: WELL, WE TALKED ABOUT THAT, I THINK, THE
 10:20AM **8** LAST TIME AS WELL.
 10:20AM **9** THE COURT: OKAY. WHAT -- I'M SORRY. I CAN'T
 10:20AM **10** REMEMBER. WHAT WAS THE CONCLUSION ON THAT?
 10:20AM **11** MR. MITTELSTAEDT: THE CONCLUSION, I THINK, WAS THAT
 10:20AM **12** WE WOULD HAVE ONE SET OF HEARINGS -- WITH THE RULE 56 MOTIONS,
 10:20AM **13** WE'D FILE RELATED DAUBERT MOTIONS.
 10:20AM **14** THE COURT: OKAY.
 10:20AM **15** MR. MITTELSTAEDT: AND THEN THE OTHER DAUBERT OR IN
 10:20AM **16** LIMINE MOTIONS WOULD BE FILED AND HEARD AT THE TIME OF THE
 10:20AM **17** PRETRIAL CONFERENCE I THINK IS WHAT WE TALKED ABOUT.
 10:20AM **18** MR. SAVERI: RIGHT. AND THERE WAS SOME DISCUSSION,
 10:20AM **19** AND IT CERTAINLY WASN'T RESOLVED, ABOUT LIMITATIONS ON -- PAGE
 10:20AM **20** LIMITS, I GUESS, ON THE IN LIMINE AND DAUBERT MOTIONS FOR
 10:20AM **21** TRIAL, AND THAT'S AS FAR AS WE GOT.
 10:20AM **22** THE COURT: OKAY. WELL, LET ME -- YOU KNOW, IF THE
 10:20AM **23** DAUBERT MOTIONS ARE LIKE THE DAUBERT MOTIONS I SAW ON THE CLASS
 10:21AM **24** CERT MOTION, I'M GOING TO BE DISAPPOINTED BECAUSE, YOU KNOW,
 10:21AM **25** ULTIMATELY THAT'S REALLY WEIGHT AND NOT ADMISSIBILITY AND THE
 UNITED STATES COURT REPORTERS

10:21AM **1** CRITICISMS THAT EACH SIDE RAISED ARE REALLY MORE FOR

10:21AM **2** CROSS-EXAMINATION AND FOR CLOSING ARGUMENT.

10:21AM **3** SO I REALLY -- I JUST DON'T WANT TO HAVE TO, YOU KNOW,

10:21AM **4** SPEND A TON OF RESOURCES JUST HAVING TO DO A BUNCH OF THOSE

10:21AM **5** BECAUSE THOSE ARE NOT GOING TO BE GRANTED.

10:21AM **6** SO I'D LIKE TO IMPOSE A LIMIT ON THE NUMBER OF DAUBERT

10:21AM **7** MOTIONS IN THE CASE JUST BECAUSE, YOU KNOW, WE'RE GOING TO HAVE

10:21AM **8** THE APPLE II TRIAL GOING ON POTENTIALLY AT THE SAME TIME AND

10:21AM **9** OTHER THINGS AND I JUST CAN'T, YOU KNOW, WASTE A LOT OF

10:21AM **10** RESOURCES ON A BUNCH OF MOTIONS THAT I THINK BOTH SIDES REALLY

10:21AM **11** KNOW ARE NOT GOING TO BE GRANTED AND THEY'RE REALLY GOING TO GO

10:21AM **12** TO WEIGHT AND NOT ADMISSIBILITY.

10:21AM **13** SO WHY DON'T YOU --

10:21AM **14** MR. MITTELSTAEDT: YOUR HONOR, WITH THAT GUIDANCE IN

10:21AM **15** MIND, WOULD IT MAKE SENSE FOR US TO MEET AND CONFER AND SEE IF

10:21AM **16** WE CAN REACH AGREEMENT ON THAT? WE ARE ON A STREAK OF AGREEING

10:22AM **17** TO THINGS.

10:22AM **18** THE COURT: OKAY.

10:22AM **19** MR. MITTELSTAEDT: AND SO --

10:22AM **20** THE COURT: WELL, THEN, I THINK YOU SHOULD HAVE YOUR

10:22AM **21** ADR RIGHT NOW WHILE THE IRON IS HOT AND THE FEELINGS ARE GOOD

10:22AM **22** AND --

10:22AM **23** MR. SAVERI: DO YOU HAVE A JURY ROOM? WE'LL GO OUT

10:22AM **24** AND GET IT RESOLVED BY NOON AND THEN GO HAVE LUNCH.

10:22AM **25** THE COURT: IF YOU RESOLVE THE CASE, I WILL ORDER

UNITED STATES COURT REPORTERS

10:22AM **1** PIZZA. I MEAN, WHATEVER YOU WANT. I WILL GO BAKE YOU SOME

10:22AM **2** BROWNIES RIGHT NOW. I MEAN, WHATEVER IT TAKES.

10:22AM **3** MR. SAVERI: OKAY.

10:22AM **4** THE COURT: BUT WHY DON'T WE ADD -- CAN WE ADD THEN

10:22AM **5** LIMITATIONS ON MOTIONS SINCE I WAS HOPING THAT -- WHEN WE

10:22AM **6** FINISH WITH THIS SCHEDULE, I WANT TO GIVE YOU SOME TIME TO SEE

10:22AM **7** IF YOU CAN WORK OUT SOME OF THESE DISCOVERY --

10:22AM **8** MS. DERMODY: YES, YOUR HONOR.

10:22AM **9** THE COURT: -- ISSUES THAT ARE IN DISPUTE. CAN YOU

10:22AM **10** WORK ON LIMITATIONS, BECAUSE THAT WOULD BE VERY HELPFUL -- ON

10:22AM **11** EVERYTHING, ON DAUBERTS, ON MOTIONS IN LIMINE, AND SUMMARY

10:22AM **12** JUDGMENT?

10:22AM **13** YOU KNOW, BECAUSE JUST HUMANLY WITH OUR CASE LOAD AND WITH

10:22AM **14** THE NUMBER OF VACANCIES WE HAVE ON THE DISTRICT COURT RIGHT

10:23AM **15** NOW, I'M NOT GOING TO BE ABLE TO DO EIGHT SUMMARY JUDGMENT

10:23AM **16** MOTIONS. IT'S JUST NOT GOING TO BE POSSIBLE.

10:23AM **17** SO CAN WE GET SOME DISCUSSION ON THAT AS WELL?

10:23AM **18** MR. MITTELSTAEDT: YOUR HONOR --

10:23AM **19** THE COURT: I DON'T WANT TO DEPRIVE ANYONE OF DUE

10:23AM **20** PROCESS AND I DO UNDERSTAND THAT THERE ARE SEVEN INDEPENDENT,

10:23AM **21** TOTALLY SEPARATE DEFENDANTS HERE.

10:23AM **22** BUT WHAT CAN WE DO TO --

10:23AM **23** MR. MITTELSTAEDT: WHAT I WOULD SUGGEST, YOUR HONOR,

10:23AM **24** IS WE OUGHT TO TALK ABOUT IT AMONG OURSELVES AND WITH THE

10:23AM **25** PLAINTIFFS.

UNITED STATES COURT REPORTERS

10:23AM **1** THE COURT: OKAY.

10:23AM **2** MR. MITTELSTAEDT: BUT, FRANKLY, WE'VE BEEN FOCUSING

10:23AM **3** ON THE CLASS MOTION.

10:23AM **4** THE COURT: SURE.

10:23AM **5** MR. MITTELSTAEDT: AND I HAVEN'T THOUGHT ABOUT WHAT

10:23AM **6** THE SUMMARY JUDGMENT MOTIONS ARE GOING TO BE, WHAT THE EXPERTS

10:23AM **7** ARE GOING TO BE.

10:23AM **8** THE COURT: UM-HUM.

10:23AM **9** MR. MITTELSTAEDT: IF WE COULD HAVE A WEEK OR TWO TO

10:23AM **10** CAUCUS AMONG OURSELVES AND WITH THE PLAINTIFFS AND SEE IF WE

10:23AM **11** CAN COME UP WITH A PROPOSAL FOR THE COURT, RECOGNIZING THAT

10:23AM **12** WE'RE TALKING ABOUT WHAT'S GOING TO HAPPEN --

10:23AM **13** THE COURT: DOWN THE ROAD.

10:23AM **14** MR. MITTELSTAEDT: -- DOWN THE ROAD.

10:23AM **15** THE COURT: OKAY. MAYBE WE CAN HANDLE THAT AT OUR

10:23AM **16** NEXT CMC, BUT I WOULD -- YOU KNOW, IF YOU REACH ANY AGREEMENTS

10:23AM **17** TODAY, LET ME KNOW.

10:23AM **18** BUT, YOU KNOW, THE LIKELIHOOD THAT THERE'S NOT GOING TO BE

10:24AM **19** A SINGLE MATERIAL FACTUAL DISPUTE IN THIS CASE IS SO UNLIKELY,

10:24AM **20** I THINK, YOU KNOW, JUST BASED ON THE FULLNESS OF THE

10:24AM **21** EVIDENTIARY RECORD THAT I'VE SEEN SO FAR THAT I -- YOU KNOW, IT

10:24AM **22** MAY BE THAT WE JUST SKIP SUMMARY JUDGMENT COMPLETELY. THE

10:24AM **23** RECORD IS TOO RICH.

10:24AM **24** DO YOU REALLY THINK THERE'S NOT GOING TO BE A SINGLE

10:24AM **25** MATERIAL FACTUAL DISPUTE BASED ON WHAT YOU'VE SEEN SO FAR?

UNITED STATES COURT REPORTERS

10:24AM **1** I THINK THAT'S REALLY UNLIKELY, BUT, YOU KNOW, I'LL KEEP AN

10:24AM **2** OPEN MIND AND WE'LL FIGURE IT OUT.

10:24AM **3** BUT IF YOU WOULD PLEASE WORK ON LIMITATIONS?

10:24AM **4** OKAY. SO THEN WHY DON'T WE SAY, FOR NOW, MAY 8TH WILL BE

10:24AM **5** THE FINAL PRETRIAL CONFERENCE WHERE WE'LL HANDLE MOTIONS IN

10:24AM **6** LIMINE, WHICH I'M GOING TO LIMIT TIGHTLY JUST BECAUSE THERE'S

10:24AM **7** REALLY, I THINK, ONLY A FEW GOOD ONES AND THE REST TEND TO BE

10:24AM **8** LESS USEFUL, AND I GUESS IF WE'RE GOING TO DO ANY DAUBERTS, AND

10:24AM **9** THEN THE HEARING ON MARCH 20TH, 2014 AT 1:30 ON DISPOSITIVE

10:25AM **10** MOTIONS. HOPEFULLY THERE WILL BE NONE.

10:25AM **11** OKAY?

10:25AM **12** MR. SAVERI: DO -- I'M SORRY. DO YOU HAVE A TIME IN

10:25AM **13** MIND? IS THAT GOING TO BE --

10:25AM **14** THE COURT: 1:30.

10:25AM **15** MR. SAVERI: OKAY.

10:25AM **16** THE COURT: SO EVERYTHING -- MARCH 20TH AND MAY 8TH

10:25AM **17** ARE BOTH 1:30. THEY'LL BE ON MY THURSDAY LAW AND MOTION

10:25AM **18** CALENDARS. THE TRIAL TUESDAY WILL BE AT 9:00.

10:25AM **19** AND THEN FOR THE REPLIES, FEBRUARY 27TH FOR THE SUMMARY

10:25AM **20** JUDGMENT REPLY; FEBRUARY 6TH FOR THE OPPOSITION; AND

10:25AM **21** JANUARY 9TH FOR THE FILING OF DISPOSITIVE MOTIONS. OKAY?

10:25AM **22** CLOSE OF EXPERT DISCOVERY, I HAVE DECEMBER 23RD; REPLY

10:25AM **23** REPORTS DECEMBER 9; REBUTTAL EXPERT REPORTS NOVEMBER 25; AND

10:25AM **24** OPENING EXPERT REPORTS ON OCTOBER 28TH.

10:26AM **25** MR. SAVERI: CAN I READ THAT BACK TO YOU?

UNITED STATES COURT REPORTERS

10:48AM **1** IN MAY, JUST GIVE SOME PROPOSAL WHAT THAT MIGHT LOOK LIKE.

10:48AM **2** I DON'T WANT A LONGER HEARING. WE ALREADY DID -- WHAT? --

10:48AM **3** SEVERAL HOURS, BUT I'M GOING TO HAVE VERY FOCUSED QUESTIONS

10:48AM **4** AND I WANT WHOEVER CAN GIVE ME THE INFORMATION I NEED TO BE

10:49AM **5** AVAILABLE. THAT'S ALL.

10:49AM **6** MS. DERMODY: ALL RIGHT.

10:49AM **7** THE COURT: OKAY. NOW, ANOTHER THING THAT I WOULD

10:49AM **8** LIKE YOU TO -- I WOULD REALLY LIKE TO LIMIT THE NUMBER OF

10:49AM **9** MOTIONS TO STRIKE IN THE NEXT ROUND. I'VE ALREADY SAID BEFORE

10:49AM **10** THAT IF IT'S REALLY JUST WEIGHT AND NOT ADMISSIBILITY, I REALLY

10:49AM **11** DON'T WANT TO SEE A 702 MOTION ON STUFF THAT REALLY SHOULD BE

10:49AM **12** RESERVED FOR CROSS AND FOR CLOSING ARGUMENTS.

10:49AM **13** SO CAN WE HAVE YOU ALL ALSO DISCUSS THAT AS -- I MEAN, IT'S

10:49AM **14** JUST THAT, YOU KNOW, WE'RE GOING THROUGH SEQUESTRATION AND WITH

10:49AM **15** ALL OF THESE CASES, TO THE EXTENT WE CAN AVOID AN OTHERWISE

10:49AM **16** UNNECESSARY MOTION, I'D GREATLY APPRECIATE IT.

10:49AM **17** IF, FOR APPEAL, YOU NEED TO AT LEAST JUST PUT ON THE RECORD

10:49AM **18** THAT, YOU KNOW, THAT YOU BOTH -- BOTH SIDES STIPULATE THAT YOU

10:49AM **19** WOULD HAVE FILED A 702 MOTION TO STRIKE, YOU KNOW, ON THE BASIS

10:49AM **20** OF NOT MEETING THE REQUIREMENTS OF 702, I'M FINE.

10:49AM **21** BUT IF THERE'S SOME WAY -- I HAVE DONE THAT IN OTHER CASES

10:50AM **22** WHERE -- THE PATENT CASE THAT WENT TO TRIAL IN DECEMBER, THE

10:50AM **23** PARTIES JUST STIPULATED THAT THEY WOULD HAVE FILED ALL THESE

10:50AM **24** RULE 50 MOTIONS AND FOR PURPOSES OF APPEAL, THEY RESERVED IT,

10:50AM **25** BUT THEN WE DIDN'T ACTUALLY GO THROUGH ALL OF THE ACTUAL

UNITED STATES COURT REPORTERS

10:50AM **1** MOTIONS.

10:50AM **2** MR. SAVERI: YOUR HONOR, SO WE WERE THE MOVING PARTY

10:50AM **3** ON A LOT OF THE MOTIONS TO STRIKE.

10:50AM **4** THE COURT: YEAH.

10:50AM **5** MR. SAVERI: AND THEY REALLY CAME UP FOR TWO REASONS.

10:50AM **6** ONE WAS IT HAD TO DO WITH THE EXTENT TO WHICH THE EXPERT RELIED

10:50AM **7** ON MATERIALS THAT WE BELIEVED WE DIDN'T GET IN ADVANCE.

10:50AM **8** THE COURT: RIGHT. AND THE DECLARATIONS -- I GRANTED

10:50AM **9** IT IN PART.

10:50AM **10** MR. SAVERI: AND SO --

10:50AM **11** THE COURT: I'M NOT TALKING ABOUT THAT ONE.

10:50AM **12** BUT I'M TALKING ABOUT JUST THE 702 TYPE DAUBERT OBJECTIONS.

10:50AM **13** MR. SAVERI: OKAY.

10:50AM **14** THE COURT: YEAH, NO. I THOUGHT THAT WAS LEGITIMATE.

10:50AM **15** IF I GRANTED IT, I OBVIOUSLY AGREED WITH YOU.

10:50AM **16** BUT TO THE EXTENT WE CAN AVOID UNNECESSARY DAUBERT MOTIONS,

10:50AM **17** I WOULD GREATLY APPRECIATE IT.

10:50AM **18** MR. MITTELSTAEDT: YOUR HONOR, WE WILL TAKE THAT INTO

10:50AM **19** ACCOUNT. WE CAN'T REALLY PROMISE ANYTHING --

10:50AM **20** THE COURT: SURE, BECAUSE YOU HAVEN'T SEEN IT.

10:50AM **21** MR. MITTELSTAEDT: -- UNTIL WE SEE --

10:50AM **22** THE COURT: WELL, I AM GOING TO REQUIRE IF YOU DO DO

10:51AM **23** IT, IT'S GOING TO HAVE TO BE INCLUDED IN YOUR 25 BRIEFING

10:51AM **24** LIMITS PER THE CIVIL LOCAL RULES. I'M NOT GOING TO GIVE YOU

10:51AM **25** ANY EXTENSIONS THIS TIME AROUND TO INCLUDE A LOT OF OTHER

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10:51AM **1** STUFF. THIS TIME THE BRIEFING IS GOING TO BE -- YOU WANT IT TO

10:51AM **2** BE MORE THAN 25, 25, AND 15? OR WHAT?

10:51AM **3** MS. DERMODY: I THINK THAT'S FINE, YOUR HONOR.

10:51AM **4** THE COURT: OKAY.

10:51AM **5** ALL RIGHT. WHAT ELSE? IS THERE ANYTHING ELSE WE NEED TO

10:51AM **6** COVER TODAY?

10:51AM **7** MR. MITTELSTAEDT: NOT FROM OUR SIDE.

10:51AM **8** MS. DERMODY: NOTHING HERE.

10:51AM **9** THE COURT: NO? OKAY. THEN WE'LL SEE YOU ON

10:51AM **10** MAY 15TH.

10:51AM **11** MR. SAVERI: THANK YOU, YOUR HONOR.

10:51AM **12** MS. DERMODY: THANK YOU, YOUR HONOR.

10:51AM **13** THE COURT: WE'LL ISSUE A CASE MANAGEMENT ORDER WITH

10:51AM **14** ALL THE DATES, TOO. THANK YOU.

10:51AM **15** MR. MITTELSTAEDT: THANK YOU, YOUR HONOR.

10:51AM **16** MS. DERMODY: THANK YOU, YOUR HONOR.

10:51AM **17** MR. SAVERI: THANK YOU, YOUR HONOR.

10:51AM **18** (THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)

UNITED STATES COURT REPORTERS

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CERTIFICATE OF REPORTER

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I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 12, 2013

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